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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

M.C.,

Petitioner,

v.

THE SUPERIOR COURT OF CONTRA
COSTA COUNTY,

Respondent;

CONTRA COSTA CHILDREN AND
FAMILY SERVICES BUREAU,

Real Party in Interest.

A156368

(Contra Costa County
Super. Ct. No. J17-01300)

This writ arises from dependency proceedings involving C.M., a boy born in 2015. At the 12-month review hearing in January 2019, the juvenile court terminated reunification services to C.M.'s father, M.C. (Father), and set a permanency planning hearing under Welfare and Institutions Code section 366.26.¹ C.M.'s mother (Mother) died in October 2017 (prior to the commencement of the dependency case) after being involved in a car accident. Father has filed a petition for extraordinary writ relief, contending the court should have extended reunification services and set an 18-month review hearing. We deny the petition.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

I. BACKGROUND

A. Detention, Jurisdiction and Disposition

On December 13, 2017, the Contra Costa County Children and Family Services Bureau (the Bureau) filed a dependency petition on behalf of two-year-old C.M., after investigating allegations of neglect by Father. A detention report, also filed in December 2017, stated that, prior to her passing, Mother, with the assistance of her mother, was C.M.'s primary custodian when she was not in jail. During the investigation of the neglect allegations, the Bureau also received information about Father's alleged substance use, criminal lifestyle and involvement in domestic violence. On November 28, 2017, during the investigation, father acknowledged that he was absent for the first six months of C.M.'s life and stated it was because C.M.'s mother and her family kept him away. Father stated he was on probation but reported he was working and staying out of trouble, so he could care for his son.

On December 4, 2017, Father was arrested and taken to jail for a probation violation and for taking a vehicle without consent. On December 14, 2017, the court ordered C.M. detained from Father's custody. He was placed in foster care. The court also terminated a temporary legal guardianship obtained by C.M.'s maternal grandmother. The Bureau was concerned about placement with the maternal grandmother, in part because she had not reunified with her own daughter (Mother), who as a teen was the subject of a dependency proceeding and was placed in long-term foster care. During the period between Mother's death in late October 2017 and C.M.'s placement into foster care in mid-December 2017, he was "shuffled from place to place" among relatives, including Father and the maternal grandmother. Father and the maternal relatives had not been able to "work together to find a solution that is in [C.M.'s] best interest."

Also at the December 14, 2017 detention hearing, the court found Father to be C.M.'s presumed father and approved weekly visitation with him upon his release from custody. (Father agreed to having no visits while he was in custody.) The court set a jurisdiction hearing for January 2018.

In mid-January 2018, following mediation, Father entered a plea of no contest to the following allegations in the dependency petition (reflecting amendments agreed to by the parties): (1) “The father places the child at substantial risk of physical harm in that he has a history of engaging in domestic violence for which he has not sought treatment” (see § 300, subd. (b) [failure to protect]), and (2) “The father was incarcerated on December 4, 2017, without a formal plan for care and support for the child” (see § 300, subd. (g) [no provision for support]).

At a disposition hearing in mid-February 2018, the court adjudged C.M. a dependent and ordered that reunification services be provided to Father. A Bureau report prepared for the hearing stated Father had been out of jail since December 28, 2017. Visits between Father and C.M. since that time had been appropriate and loving in nature. Father told the social worker he was devastated by Mother’s death and felt he could benefit from therapy. He also stated he struggles with substance abuse and could benefit from inpatient treatment as well as a parenting class. He stated he was grateful for the opportunity to raise his son and understood he needed to “ ‘step up and get his life together.’ ”

Father had begun to make some efforts in this direction. Father made an initial call to look into getting into treatment but had not yet followed through with getting into a program. Father also had begun drug testing but already had missed one test. The case plan approved for Father at the disposition hearing included individual counseling, parenting education, completion of a substance abuse treatment program, random drug and alcohol testing, and participation in a 12-step program.

B. The Six-Month Hearing

At the six-month review hearing in August 2018, the court, adopting the Bureau’s recommendations, continued services to Father, finding he had made substantial progress in his case plan. The social worker’s report for the six-month hearing stated Father was engaged in most of his case plan services but had struggled with consistent participation. He was between jobs for most of the reporting period. Father told the social worker on May 9, 2018 that he had relapsed and used marijuana during the month of April. As a

result, he stopped participating in random drug testing for the Bureau. Although he had tested negative during most of March 2018, he did not test for the Bureau from late March until July 2018. He had recently restarted testing, although the Bureau did not yet have the results for the recent tests.

Father began an outpatient treatment program in May 2018, where he reportedly was an active participant and had a good attitude. He began drug testing for that program, testing positive for marijuana on May 14 but testing negative on several dates in June and July. The testing for the program was scheduled and not as comprehensive as testing for the Bureau. Father participated in Narcotics Anonymous/Alcoholics Anonymous, attending multiple sessions in April, June and July, as well as one session in May. He was participating in anger management services and was scheduled to begin a parenting class on August 1, 2018. Father also reported that he had completed his formal probation and did not have any criminal matters pending.

Father's weekly supervised visits with C.M. continued to go well. At the beginning of the reporting period, however, Father did not consistently attend visits. He told the visitation supervisor that his inconsistent attendance was due to his participation in an inpatient treatment program, but the visitation supervisor later learned that Father was not participating in an inpatient program. From March 13, 2018 through the remainder of the review period, with the exception of three missed visits, Father attended all scheduled visits. The social worker hoped to be able to begin unsupervised visits with Father on August 7, 2018.

C. The Report For the 12-Month Hearing

In advance of the 12-month permanency hearing in January 2019, the Bureau recommended the court terminate reunification services to Father. The Bureau reported that, on September 17, 2018, Father was arrested after the police responded to a call stating an unknown person was banging on the reporting party's front door. The responding officer identified Father as the person on the reporting party's doorstep. He had a loaded handgun and appeared to be intoxicated. The serial number on the handgun

had been altered and was unreadable. Father was arrested for possession of a concealed loaded firearm and for public intoxication.

Father told the social worker in December 2018 that he found the gun a few days before his arrest and kept it with him for protection. Father stated, “ ‘The life that I lived I felt that I needed to protect myself.’ ” (Italics omitted.) He explained that after he turned 18, he began to make wrong choices including “ ‘hanging out on the streets, and selling drugs.’ ” (Italics omitted.) Father stated his arrest was a turning point for him, as he realized his actions could cause him to fail to reunify with C.M.

On November 16, 2018, Father entered an inpatient drug-treatment program because he had relapsed with alcohol. He became an active participant in his classes there, which included anger management and grief recovery as well as sobriety and relapse prevention. Father also began individual therapy on November 12, 2018, and his therapist reported Father seemed sincere in his desire to make life changes and reunify with his son. Father enrolled in a 52-week anger-management program on July 18, 2018, and he had attended 18 sessions with five unexcused missed sessions.

Father also completed a parenting-education course in November 2018. He continued to drug test for the Bureau inconsistently, testing negative 14 times and missing six tests. He tested positive for codeine once, but this was excused as he had a prescription for the medication. Father continued his one-hour weekly supervised visits with C.M. As a result of Father’s September 2018 arrest, the visits were “stepped back” from unsupervised to supervised.

The Bureau stated in the report that Father now seems “sincere in his desire to change his life” but is “very early in his recovery process.” It apparently took his September 2018 arrest (nine months after C.M. was detained in December 2017) to cause Father to become serious about his recovery. Noting C.M.’s young age, the Bureau concluded Father had “exhausted his reunification time.” The Bureau recommended termination of reunification services.

D. The Contested 12-Month Hearing

At the 12-month review hearing on January 24, 2019, the social worker testified about Father's participation in services and his visits with C.M. The social worker explained that although Father was now actively engaged in services and complying with his case plan, his progress came very late in the dependency process. The social worker testified Father has a probation officer, but she had not contacted the probation officer to find out the terms of Father's probation.

Father testified he was in custody for four days after his September 2018 arrest. He testified that, according to his probation officer, he is not on probation but has to check in with the probation officer once a month. Father expected the felony charges arising from that incident would be reduced to misdemeanors; his next criminal court hearing was set for March 12, 2019.

Father testified that he only relapsed with alcohol the one night when he was arrested in September 2018 and he did so because he found out his girlfriend lost their unborn child during birth. He stated he had not drunk alcohol since the arrest. Father also testified about the services he engaged in during the dependency. He testified that January 24, 2019 was his last day at his substance-abuse treatment program. He stated he would continue to attend 12-step meetings, participate in therapy and attend anger management and domestic-violence classes. He was recently prescribed medications, including one for depression, one as a sleep aid and one to help with his alcohol craving. He testified he was more focused and understood there was "no more room for errors, or messing up; there's no more chances." He felt he was now "on a straight path."

The court stated that in August 2018, there was reason to be hopeful for Father due to his progress. The court explained it was sad to read about the circumstances of Father's September 2018 arrest: he was drunk with a loaded gun, banging on someone's door, at the early morning hour of 1:00 a.m. The court noted that, even after the arrest, Father was not motivated enough to attend all his drug tests. The court did not find Father's testimony credible, especially his testimony about his criminal case and his work with his probation officer. (During Father's testimony, the court asked if his probation

officer had encouraged him to participate in drug treatment in an effort to have his felony charges reduced to misdemeanors, and Father stated the probation officer had not done so.)

The court stated that, while Father was taking the time since C.M.'s detention to grow up, C.M. was growing up too, and he deserved a safe, permanent, and stable home. The court adopted the Bureau's recommendation, terminated reunification services to Father, and set a section 366.26 hearing for May 16, 2019.

II. DISCUSSION

If a child is not returned to parental custody at the 12-month permanency hearing, the juvenile court generally must either (1) continue the case for six more months, (2) set a section 366.26 hearing and terminate reunification services, or (3) order the child remain in long-term foster care. (§ 366.21, subds. (g), (h); *A.H. v. Superior Court* (2010) 182 Cal.App.4th 1050, 1059.) To continue the case beyond the 12-month hearing, the court must find "that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian." (§ 366.21, subd. (g)(1).) And to find there is a substantial probability of return within the extended time, the court must in turn find all of the following: "(A) That the parent . . . has consistently and regularly contacted and visited with the child. [¶] (B) That the parent . . . has made significant progress in resolving problems that led to the child's removal from the home. [¶] (C) The parent . . . has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs." (*Ibid.*) "[T]he Legislature has set a very high hurdle for continuing the case beyond 12 months." (*A.H., supra*, 182 Cal.App.4th at p. 1060.)

Here, the court did not find there was a substantial probability C.M. would be returned to Father's custody within the next six months. Father contends the court should have done so and thus should have ordered an additional six months of reunification

services.² We review for substantial evidence the determination whether there is a substantial probability of return to parental custody by the next review hearing. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688–690.)

Substantial evidence in the present record supports the conclusion there was not a substantial probability of return within the applicable time period. The parties agree Father consistently visited C.M. And by the time of the 12-month permanency hearing in January 2019, Father was engaging in his case plan and participating in services. He completed an inpatient drug-treatment program and a parenting class and was participating in individual therapy. But the court reasonably could conclude, as the Bureau did, that Father was still in the early stages of his recovery (or was still “growing up,” as the court put it). Father continued to miss drug tests, and his attendance of anger-management classes was inconsistent.

In addition, Father’s relapses, including his substance use in April 2018 and his alcohol use and criminal activity in September 2018 (which followed a relatively hopeful state of affairs at the August 2018 review hearing), support a conclusion that Father’s progress at the time of the January 2019 hearing, while encouraging, was still fragile and uncertain. Contrary to Father’s suggestion, such a conclusion is not based on “speculation” but on the evidence of Father’s inconsistent progress. We note there was evidence that, prior to his recent efforts at recovery, Father was for several years involved in a pattern of criminal behavior and substance abuse. The court could conclude Father still had some distance to go to overcome the problems that led to the dependency and had not yet demonstrated the ability to provide for C.M.’s safety and needs. (See § 366.21, subd. (g)(1).)

² Father does not argue the court should have returned C.M. to his custody at the 12-month hearing (which the court found would be detrimental to C.M. (see § 366.21, subd. (f)(1))), nor does he challenge the court’s finding that the Bureau provided reasonable services (see § 366.21, subd. (g)(1)).

III. DISPOSITION

The petition is denied on the merits. (See § 366.26, subd. (d)(1)(C); Cal. Rules of Court, rule 8.452(h).) The request for a stay of the section 366.26 hearing is denied. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

STREETER, J.

WE CONCUR:

POLLAK, P.J.

TUCHER, J.

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